Calendar No. 576

105TH CONGRESS, *2d Session* | SENATE | REPORT 105–333

SECURITY ASSISTANCE ACT OF 1998

SEPTEMBER 14, 1998.—Ordered to be printed

Mr. HELMS, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 2463]

The Committee on Foreign Relations, having had under consideration an original bill to amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to provide authorities with respect to the transfer of excess defense articles and the transfer of naval vessels and for other purposes, reports favorably thereon and recommends that the bill do pass.

CONTENTS

PURPOSES OF THE BILL

The purpose of title I of this bill is to amend authorities under the Foreign Assistance Act (FAA) of 1961, as amended, and the Arms Export Control Act (AECA) to revise and consolidate defense and security assistance authorities, in particular by updating policy and statutory authorities.

The purpose of title II of this bill is to authorize the transfer of naval vessels to certain foreign countries pursuant to the Administration's request.

COMMITTEE ACTION

On July 23, 1998, Chairman Jesse Helms, along with the Ranking Democratic Member, Joseph R. Biden, Jr., introduced this original bill in Committee. The Committee subsequently debated the measure and ordered reported this bill unanimously by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1—Short Title

This Act may be cited as the "Security Assistance Act of 1998".

Section 2—Table of Contents

This Act is organized into two titles:

Title I—Defense and Security Assistance.
Title II—Transfer of Naval Vessels to Certain Foreign Countries

TITLE I—DEFENSE AND SECURITY ASSISTANCE

Section 101—Excess Defense Articles for Central European Countries

The primary purpose of the Excess Defense Articles (EDA) program has been to reduce excess or obsolete stocks of defense articles by offering equipment to eligible friendly foreign governments for enhancement of their defense capabilities. These equipment transfers are an important element of United States foreign policy.

Most Central European countries desperately seek U.S. EDA to replace former Soviet equipment and reduce their dependency upon Russia. Transfers of EDA also enhance their interoperability with NATO forces. Unfortunately, most Central European countries cannot afford the packing, crating, handling, and transportation costs associated with an EDA transfer. As a result, without the authority provided under Section 101, the EDA program will be virtually unavailable to the countries that need it most.

This type of authorization was provided for in Fiscal Years 1996 and 1997, thereby ensuring that EDA continued to be a viable option for the Central European countries. Department of Defense funds were authorized for the packing, crating, handling, and transportation costs for countries eligible to participate in the Partnership for Peace (PFP) program and to receive assistance under the Support for East European Democracy (SEED) Act of 1989. This provision will extend the authority for Fiscal Years 1998, 1999 and 2000.

Section 102—Excess Defense Articles for Certain Independent States of the Former Soviet Union

The President recently determined that the furnishing of defense articles and services to a number of countries such as Georgia, Kazakhstan, Kyrgyzstan, Moldova, Ukraine, and Uzbekistan would strengthen the security of the United States. This determination makes these countries eligible for grant Excess Defense Articles (EDA), which will promote the participation of these countries in

the Partnership for Peace program and further interoperability with U.S. and NATO forces.

The Committee expects that a number of militaries likely will be interested in obtaining U.S. security assistance through the EDA program. Units that could especially benefit from EDA may include the Ukrainian-Polish peacekeeping battalion, the Central Asian peacekeeping battalion (composed of troops from Kazakstan, Kyrgyzstan, and Uzbekistan), and the Ukrainian Stabilization Force (SFOR) unit, currently engaged in peacekeeping activities in Bosnia.

However, given the weak nature of their national economies and the difficulty in funding their military budgets, most of these countries cannot afford the costs of packing, crating, handling, and transportation, even if the EDA itself is provided at no cost. Some costs could potentially be borne through their Foreign Military Financing grants. But for most of the independent states of the former Soviet Union, these grants are not large enough to cover EDA-associated costs as well as the cost of equipment purchased for interoperability purposes.

Accordingly, the Administration is seeking authority to use funds appropriated for the national defense of the United States to pay for packing, crating, handling, and transportation of excess defense articles to these countries.

The Committee recommends the provision of this authority. However, the Department of Defense is not authorized under Section 102 to expend any funds for the crating, packing, handling, or transportation of excess defense articles to either Russia or Turkmenistan. It is the view of the Committee that, at this time, neither country is deserving of access to excess U.S. defense equipment. Russia is a major military power in its own right. The Committee opposes subsidization of the Russian military with U.S. defense equipment and funds. The Committee also opposes such subsidization of the Government of Turkmenistan so long as that regime's gross human rights abuses persist.

Further, the Committee is concerned with the potential impact of Section 102 upon the Department of Defense. Accordingly, no funds shall be expended for the crating, packing, handling, or transportation of excess defense articles under this section until the Committee is notified of the amount proposed to be so expended.

Section 111—Continuation of Foreign Military Financed Training After the Termination of Assistance

The Foreign Assistance Act of 1961 provides for the orderly termination of assistance to a particular recipient upon action by the President or the Congress. However, this pertains only to training assistance provided under the Foreign Assistance Act, such as International Military Education Training (IMET). The Foreign Assistance Act does not currently provide for the orderly termination of training supported with assistance made available by other authorities, such as that funded by Foreign Military Financing (which is authorized by the Arms Export Control Act). Section 111 extends Section 617 of the Foreign Assistance Act to cover Foreign Military-

Financed training, as well as other Foreign Military-Financed activities.

The second sentence is included for clarification. The insertion of "and the Arms Export Control Act" and the deletion of "under this Act" make it clear that the sentence refers to both the Foreign Assistance Act of 1961 and the Arms Export Control Act.

Section 112—Sales of Excess Coast Guard Property

On occasion, the United States Coast Guard determines that some of its smaller vessels are excess. These vessels are suitable for various countries which may not possess a "blue water" navy but are in need of equipment for coastal and riverine defense, and for search-and-rescue operations.

Currently, Section 516(i) of the Foreign Assistance Authorization Act of 1961 authorizes the grant transfer of excess Coast Guard equipment to eligible foreign countries for their defense capabilities. It does not authorize, however, the sale of excess Coast Guard equipment. Section 112 amends the Arms Export Control Act to authorize the United States Government to provide excess Coast Guard equipment on a sales basis, in addition to the extant grant authority. The sale of excess Coast Guard equipment to foreign countries will generate funds for the United States Treasury miscellaneous receipts account. Once this authority is made available, the Committee intends to urge the Administration to ensure that, in the future, Coast Guard vessels are sold rather than given away.

Section 113—Notification of Upgrades to Direct Commercial Sales

Section 113 amends the Arms Export Control Act to ensure that the Committee is notified of any upgrades or enhancements to the technology or capability of a defense article or service which already has been notified to the Committee pursuant to Section 36(c) of the Arms Export Control Act (which relates to commercial arms sales).

Section 114—Reporting of Offset Agreements

Section 114 expands the information provided to Congress in notifications pursuant to sections 36(b) and 36(c) of the Arms Export Control Act. Currently, when transmitting notices of proposed letters of offer for government-to-government sales or licenses for direct commercial arms sales and manufacturing agreements, the Department of State indicates whether or not the transaction includes an offset arrangement. On occasions where the existence of an offset was affirmed, the State Department has been unable to provide any information about the nature or value of such offset, and has declined to request this information directly from the applicant. Offsets, however, can have significant implications for U.S. foreign policy as well as for the domestic economy, making them legitimate factors in Congressional consideration of an arms sale. Therefore, the provision requires future certifications to include a brief description of the offset arrangement, including the dollar amount.

Section 115—Expanded Prohibition on Incentive Payments

Section 115 amends Section 39A of the Arms Export Control Act (22 U.S.C. 2779a) to prohibit the use of incentive payments in direct commercial sales licensed under the Act. This provision reiterates the Committee's belief that the use of incentive payments to induce a person to purchase goods or services of the foreign country to satisfy an offset obligation of a U.S. supplier is an unfair practice that puts United States companies at a competitive disadvantage.

Section 39A, enacted as Section 733 of P.L. 103–226, prohibits incentive payments or compensation paid by a U.S. supplier of defense articles or services to any other U.S. company or individual to induce that company or individual to purchase or acquire goods or services provided by a foreign entity in order to satisfy an "offset" agreement made with a foreign country in connection with the sale of military articles or services. "Offsets" are a range of industrial and commercial compensations provided to foreign governments and firms as inducements or conditions for the purchase of U.S. military goods and services. The prohibition applies to those instances where the defense contractor or subcontractor seeks to make a payment to a third party to induce it to choose a foreign company over an American competitor. This instance is not clearly covered by either the federal Anti-Kickback Act, 41 U.S.C. 51, or the Foreign Corrupt Practices Act, 15 U.S. 78-dd1.

A 1997 report by the General Accounting Office noted that while Section 39A clearly applied to defense articles or services "sold under" the AECA, it did not apply to commercial sales, which are licensed under, but not sold under, the AECA. Section 115 makes clear that Section 39A is intended to cover both types of sales.

Section 115(b) amends the definition of a United States person under Section 39A specifically to include foreign subsidiaries of U.S. corporations.

The Committee notes that four years after the enactment of Section 39A, the Department of State has not yet issued implementing regulations. The 1997 GAO study noted that the lack of regulations has resulted in three uncertainties with respect to implementation of the provision: (1) the term "incentive payments;" (2) the terms "owned" and "controlled" within the definition of "United States person;" and (3) the law's enforcement and penalty provision. The Committee has included Section 115(b) in order to clarify the definition of U.S. person. However, the Committee is disappointed that the Department of State has failed to issue regulations regarding the other two uncertainties, and urges the Department to do so at the earliest possible time.

Section 121—Additions to United States War Reserve Stockpiles for Allies

The War Reserve Stockpiles for Allies programs in both Korea and Thailand directly support the United States strategy of forward engagement in the Pacific theater. Both the Republic of Korea and the Government of Thailand assume the cost of storage, maintenance and security of these stockpiles, thereby saving the

United States significant operating expenses. These stocks directly support U.S. plans for the defense of Korea. They also help to ensure continued access to staging facilities in Thailand (which have become all the more important with the loss of base rights in the Philippines).

Stockpiles enable equipment and supplies to be pre-positioned in key parts of the world to enhance U.S. and host country defense readiness. While items in the stockpiles remain the property of the United States Government, they can be made available to host nation forces in accordance with section 514(a) of the FAA. Since 1972 the United States has maintained a war stockpile in the republic of Korea, placing obsolete or excess munitions in storage as military requirements determined. The stockpile currently has 560,000 short tons of equipment totaling $3 billion. The stockpile in Thailand, on the other hand, has been maintained since 1987, and stores $70 million worth of excess military stocks.

Pursuant to Section 514 of the Foreign Assistance Act of 1961, the Department of Defense can only make additions to War Reserve Stockpiles for Allies as specifically provided for in legislation. For Fiscal Year 1998, the President requested authority to make $40,000,000 in additions to stockpiles in Korea and $20,000,000 for Thailand. For Fiscal Year 1999, the President requested a significant increase in authority—$320,000,000 for Korea and $20,000,000 for Thailand.

The additional $320,000,000 authority for the Korean program is requested for two reasons. First, the Department of the Army must retrieve 207,000 rounds of 155 millimeter high explosive shells to fill training shortfalls in the continental United States. In exchange, the United States will replace these rounds with a like number of incendiary shells. In Fiscal Year 1997, the U.S. Army transferred 53,000 rounds of 155 mm munitions. This transfer accounts for $137,000,000, or 43 percent, of the total authority requested. This proposed transfer will save the United States Army $30,000,000 by eliminating the need for new procurement of 155 mm training rounds.

Second, the authorities provided under Section 121 are requested in order that the United States might avoid the maintenance, storage, transportation, and demilitarization costs of excess munitions by transferring these items to Korea. By agreement with the Government of Korea, United States payment for the storage of assets designated as war reserve stockpiles is required if the United States uses the munitions or sells them to another country, although the assets remain under U.S. title at all times.

After a recent review by U.S. Forces Korea of its munitions assets, updated weapons systems, and the fire support plan, it was determined that large amounts of excess and obsolete munitions exist in the U.S. inventories in Korea. As a result of this review, the Army seeks a significant increase in authority to transfer to the Korean War Reserve Stockpile munitions that are now considered obsolete or excess to the requirements of U.S. Forces Korea. For instance, the M1 series tanks in Korea have been upgraded to 120 mm guns, rendering the 105 mm tank rounds excess. The Army's 38 and 45 caliber pistols have been replaced with 9 mm

handguns, making their small arms ammunition obsolete. Moreover, modern demolition initiators have replaced blasting caps and time fuses for U.S. explosives. The majority of the remaining munitions included in the $320,000,000 authorization are already stored in Korea, with the exception of 90,000 rounds for 4.2 inch mortars (which have been replaced by the 120 mm) that are located in Japan and which will be moved to Korea.

While excess and obsolete munitions could be disposed of either through foreign military sales or demilitarization, neither option is optimal. Foreign military sales to other countries are limited due to the extra cost incurred by the buyer to transport the munitions from the Korean peninsula. Demilitarization is a very slow and expensive process. The cost to the United States Army to retrograde to the United States and demilitarize the munitions covered by Section 121 would total roughly $20,000,000. Transfer of excess and obsolete munitions to the Korean War Reserve Stockpile, however, will result in the avoidance of those costs, increase storage space for U.S. Forces Korea, and improve the war fighting readiness for the Republic of Korea and the Combined Forces Command.

An additional $20,000,000 authorization is required for the Thailand program in Fiscal Year 1999. This authorization is required to fulfill expected U.S. obligations under the Memorandum of Understanding establishing the Thai War Reserve Stockpiles (WRS-T) program. While the Government of Thailand originally requested only $10,000,000 in additions for FY99, the recent economic crisis in Thailand resulted in the Chief of the Joint U.S. Military Assistance Group being notified that the Government of Thailand would only be able to pay in-country for the transportation of half of the total amount of equipment storage in the stockpile in Fiscal Year 1998 (e.g. only $10,000,000 in stockpile additions). As a result, the Government of Thailand has asked that an additional $10 million of unused authority from the FY98 authorization be requested for the FY99 WRS–T. The U.S. contribution will be matched dollar-for-dollar by the Government of Thailand. This will meet the United States goal of bringing the total value of U.S. contributions since the establishment of the program in 1987 to $100,000,000.

Section 122—Transfer of Certain Obsolete or Surplus Defense Articles in the War Reserves Stockpile for Allies

Section 514 of the Foreign Assistance Act of 1961 provides that defense articles included in Department of Defense War Reserve Stocks be transferred to foreign governments only through Foreign Military Sales. The value of the article is then counted against military assistance appropriations provided for the recipient country. Section 514 continues to explain that, for these purposes, "value" is defined as the acquisition cost of the articles plus packing, crating, handling, and transportation costs.

The Department of Defense maintains a war reserve stockpile in the Republic of Korea and the Kingdom of Thailand. These are separate stockpiles of surplus U.S.-titled munitions and equipment that are intended for transfer to the governments of Korea and Thailand, respectively, in an emergency, subject to reimbursement requirements. The two international agreements which established

these similar, but separate, programs require the United States to replace munitions and equipment with items of comparable value or reimburse the host government for all back storage and related costs if the items are removed for the benefit of any user other than Korea or Thailand.

Certain munitions and equipment in both stockpiles have become obsolete or surplus to the U.S. These items include tanks, trucks, artillery, mortars, general purpose bombs, repair parts, ammunition, barrier material, and ancillary equipment. Section 122 provides authority to the United States Armed Forces to transfer these obsolete or surplus stocks out of the stockpile before they become obsolete to Korea or Thailand. If these items become obsolete before enactment of this initiative, the U.S. will be required to expend millions of dollars to demilitarize or destroy these items or to bring them back to the continental United States.

The United States will negotiate comparable concessions with both Korea and Thailand in the form of cash compensation, services, waiver of charges otherwise payable by the U.S. Government, and other items of value. During 1995 and 1996, the U.S. Government traded $66,620,000 in obsolete and surplus equipment to the Republic of Korea for a like sum in concessions. These concessions included reclamation of equipment that was deemed surplus or obsolete but for which a need subsequently arose, minus the costs associated with storing the items by the Republic of Korea. Additionally, the Republic of Korea demilitarized equipment at no cost to the United States and accepted older equipment such as the M48A5 tanks and the M110A2 Howitzer from the stockpiles which were missing spares and no longer supportable.

Section 122 provides for fair market value compensation to the United States for surplus and obsolete munitions. It also will relieve the U.S. Government of financial indebtedness for back storage costs and other stockpile maintenance costs, and save millions in cost avoidance to demilitarize, destroy, or retrograde the munitions and equipment back to the U.S. However, the Committee expects to be kept fully appraised of all negotiations by the Department of Defense with both the Republic of Korea and the Government of Thailand regarding concessions for excess or obsolete equipment and will expect a far more comprehensive accounting of such concessions than was given in 1995.

Section 131—Foreign Military Training

Section 131 amends the Foreign Assistance Act of 1961 to prohibit any kind of United States military training for countries that are ineligible to receive International Military Education and Training (IMET), unless (1) there is prior Congressional notification, (2) the country is a NATO or major non-NATO ally, (3) the country has been designated ineligible to receive IMET on a grant basis due to the strength of its economy, (4) the training is for an operation to save the lives and property of United States citizens, or (5) the training is for an intelligence operation.

The Committee has included this requirement in light of recent press reports that U.S. special forces trained security forces in Indonesia and Pakistan at a time when international military edu-

cation and training was prohibited for those countries. The Committee believes those training exercises violated the spirit of the law and the intent of Congress, whatever their legal justification or substantive merits.

The Committee is further concerned that the Joint Combined Exchange Training program may be functioning, in effect, as a foreign military assistance program without proper U.S. foreign policy coordination. Under current law, special operations commanders may authorize JCET expenses only if the primary purpose of the activity is to train U.S. forces. According to press reports, however, the activities often provide little benefit for U.S. forces and exert a major foreign policy impact. One former commander was quoted as saying that JCETs "may be the most direct and most involved, tangible, physical part of U.S. foreign policy in certain countries." For this reason, the Committee has included the requirement for a one-time report by the Secretary of State detailing the steps that have been taken to ensure that all U.S. foreign military education and training activities are being conducted in accordance with the foreign policy objectives of the United States.

Section 132—Annual Military Assistance Reports

Section 132 expands and clarifies the information relating to military assistance and military exports that the President is required to transmit to Congress each February 1, pursuant to section 655 of the Foreign Assistance Act of 1961. Currently, this report includes information about the International Military Education and Training (IMET) program, but not about other military education and training activities that the United States conducts with foreign countries. The Committee intends that future reports include information about activities under Title 10 of the U.S. Code, such as the Military-to-Military Contacts Program (MMCP) and the Joint Combined Exchange Training (JCET) program. This provision is not intended, however, to cover joint military exercises or NATO operations.

The provision makes two additional changes to the section 655 report. First, it requires separate identification of defense articles furnished with the financial assistance of the U.S. government, such as Foreign Military Financing loans and U.S. Government-backed loan guarantees. These items are currently grouped together with commercial sales. Second, the provision requires that the report cover articles and services actually delivered to each country, as well as those authorized or licensed for prospective sale.

Finally, the Committee notes its deep concern about the late submission of reports under section 655. The report due February 1, 1997, was not completed until September 15 of that year, and the report due February 1, 1998, was submitted on July 16. No adequate explanation has been provided for these delays, and the Committee strongly urges that future reports be issued in a timely fashion.

TITLE II—TRANSFER OF NAVAL VESSELS TO CERTAIN FOREIGN COUNTRIES

Section 201—Authority to transfer certain naval vessels

Section 201 authorizes the President to make available eleven naval vessels to the Governments of Argentina, Brazil, Mexico, Taiwan, Portugal, Philippines, Chile, and Venezuela. Two vessels will be given as grants. The nine others (one of which will be provided on a lease-sale basis) will be sold, generating $105,500,000 for the United States Treasury.

Section 201(a) authorizes the grant transfer to Argentina of a 27 year-old "NEWPORT" class tank landing ship (LST 1179). The vessel cost the United States Government $53,051,000 and has six years remaining in its service life. The Argentine Navy's request for an LST dates back to 1992, when the United States offered the USS LA MOURE COUNTY to Argentina and then subsequently withdrew the offer due to a change in the LPD 17 funding plans. An offer of the USS SCHENECTADY was substituted, but the Argentine Navy declined because the ship was too expensive to reactivate.

The offer of an LST to Argentina at this time would reinforce the close relationship which has evolved over the past several years. An LST would provide the Argentine Navy with the amphibious lift capability for its Marines to support the integration of a reinforced infantry battalion in future coalition operations with the United States.

Section 201(b)(1) authorizes the sale to Brazil of the PEORIA tank landing ship (LST 1183). The Committee understands that the vessel will be sold for $2,650,000. The 27 year old ship, which has a six-year service life remaining, cost $19,903,000 originally.

The Brazilian Navy (BN) will use this second "NEWPORT" class LST to replace its aging LST "DUQUE DE CAXIAS" (ex-USS GRANT, LST–1174), which has been converted to a transport ship (LKA) due to its inability to continue to operate as an LST. Brazil will use this new LST to fulfill its requirements during international peacekeeping operations.

Sec. 201(b)(2) authorizes the transfer to Brazil on a lease-sale basis the Jumboized Fleet Oiler MERRIMACK (AO 179). This vessel originally cost $102,240,000, and has not yet served even half of its service life with the United States Navy; if notifications for the transfer are completed by November 1998—as the Committee intends—the vessel will be sold for $70,140,000.

The Brazilian Navy is currently attempting to expand the capabilities of its aircraft carrier to include fixed wing attack aviation (A-4 Skyhawks). If successful, this will require substantial underway refueling capabilities that can be provided by a CIMARRON-class Fleet Oiler.

The BN considers itself a "blue water" navy and, as such, has embarked on an ambitious fleet modernization plan to maintain its South American naval superiority. Brazil routinely participates in multinational and joint exercises with the United States, including the yearly UNITAS exercise. In the spirit of cooperation and to fur-

ther the favorable climate of U.S.-Brazilian foreign relations, the Committee views an offer of an AO to Brazil as justified.

Section 201(c)(1) authorizes the sale to Mexico of the Auxiliary Repair Dry Dock SAN ONOFRE (ARD 30). This 53 year-old vessel has outlived its service life with the U.S. Navy, and will be sold for $1,160,000.

The Secretary of the Mexican Navy requested, by name, the SAN ONOFRE for use in performing repairs for his aging fleet of ships. The Mexican Navy recently accepted from the U.S. Navy two KNOX-class frigates and may accept a third KNOX frigate as a logistics asset. Under special arrangements made with the Government of Mexico, the KNOX's will be reactivated in Mexico. The Mexican Government may use the SAN ONOFRE in the future to undertake repairs and maintenance on these vessels.

Section 201(c)(2) authorizes the sale to Mexico of the Fast Frigate PHARRIS (FF 1055). This 28 year-old vessel has 18 years of service life remaining, and will be sold for $3,410,000.

This ship is offered to Mexico for either reactivation or use as a second logistics asset for the two FFs it will reactivate. There are no other countries interested in the PHARRIS. Should Mexico decline this offer, the PHARRIS, as well as all other remaining FFs in the Inactive Fleet, will be scrapped.

Section 201(d)(1) authorizes the sale to Taiwan of the Medium Auxiliary Floating Dry Dock COMPETENT (AFDM 6). This 53 year-old vessel is 24 years past its original design service life. It will be sold to Taiwan for $1,920,000. The Taiwanese Navy has a need for a medium floating dry dock in order to perform repairs on all of its naval vessels.

Section 201(d)(2) authorizes the sale to Taiwan of the Dock Landing Ship PENSACOLA (LSD 38). This 26 year-old vessel has seven years remaining in its service life, and will be sold for $12,130,000.

The addition of an LSD to the Taiwanese Navy will significantly boost both its amphibious capability and its Naval stature. The Taiwanese Navy has been requesting a ship of this type for several years, but until now, none has been available for transfer.

This ship will have no effect on U.S.-PRC relations as it does not add new offensive capabilities to the Taiwanese Navy. Taiwan poses no amphibious threat to China.

Section 201(e) authorizes the grant transfer to Portugal of the Ocean Surveillance Ship ASSURANCE (T-AGOS 5). This 12 year-old vessel has over half of its service life remaining (16 years) and originally cost the United States $24,472,000.

Portugal accepted its first T-AGOS, the ex-AUDACIOUS, in March of 1997. The government immediately forwarded its request for a second ship of this class when available. The addition of this second T-AGOS for Portugal will continue to boost its ocean surveillance capability.

The Committee agrees to this grant transfer in support of the U.S.-Portugal "Lajes Agreement." Signed on November 21, 1995, this Agreement calls for the United States to make its best effort to provide $173 million in Excess Defense Article support to the Government of Portugal over the life of the Agreement. As a grant

transfer, the value of this ship—which should be over $10,000,000—will be applied as a credit to the U.S. obligation under this Agreement.

Section 201(f) authorizes the sale to the Philippines of the Ocean Surveillance Ship TRIUMPH (T-AGOS 4). This 12 year-old vessel has over half of its service life remaining (16 years) and originally cost the United States $25,493,000. The Government of the Philippines is expected to pay $11,370,000 for the vessel. However, the transfer of the vessel will be completed without a towed sonar array.

Section 201(g) authorizes the sale to Chile of the Medium Auxiliary Floating Dry Dock WATERFORD (ARD 5). This 53 year-old vessel has exceeded its original design service life by 26 years, and will be sold for $1,220,000. The Chilean Navy has a need for a medium floating dry dock in order to perform repairs on its NEWPORT-class LST as well as other medium sized and smaller ships.

Section 201(h) authorizes the sale to Venezuela of a Medium Auxiliary Floating Dry Dock, AFDM 2. This 53 year-old vessel has exceeded its original design service life by 25 years, and will be sold for $1,500,000.

The Venezuelan Navy has been in need of a dry dock for many years to repair its small coastal patrol craft. The Venezuelan request for such a vessel was first registered with the United States Navy in October 1995. Recent Venezuelan contributions to the U.S. national interest include their continuing contributions to the counternarcotics effort along their Caribbean coastline, as well as filling the U.S. crude oil requirements during Operation Desert Storm when shortages occurred. Further, the Venezuelan Navy is a yearly participant with the U.S. Navy during each UNITAS exercise. Accordingly, the Committee recommends sale of this vessel.

Section 202—Authority to transfer naval vessels to the eastern Mediterranean region

Section 202 authorizes the transfer of twelve vessels to Greece and Turkey. The amount that will be generated by the four sales and the four lease-sales will total $593,870,000.

Section 202(a) requires the President to certify, prior to the provision of a vessel to either Greece or Turkey, that the proposed transfer is consistent with the United States' stated objective of ensuring a peaceful, stable atmosphere in the eastern Mediterranean region.

Section 202(b)(1) authorizes the lease-sale transfer to Greece of four Guided Missile Destroyers: the KIDD (DDG 993), CALLAGHAN (DDG 994), SCOTT (DDG 995), and CHANDLER (DDG 996). These vessels range between 15 and 16 years in age, and have a remaining service life of 23 years. The original acquisition value of these four vessels totals $1,241,644,000. Greece will purchase these vessels for $474,410,000, (over the life of the leases). This assumes that DDG 995 is transferred in "hot" condition with Congressional notification no later than November 1998.

Greece is in the midst of a force modernization program to which KIDD-class DDGs would be a major addition. The Greek Navy has

recently purchased MEKO-class and KORTENAER-class FFGs and has expressed a strong interest in obtaining Flight III and IV PERRY-class FFGs from the United States. In addition, the Hellenic Navy has stated a plan to decommission its older ex-USN KNOX and ADAMS-class FFs and DDGs, as well as six corvettes in order to afford and man these larger warships. Greece has also tied these acquisitions to the purchase of four new construction corvettes from Ingalls Shipbuilding.

KIDD-class DDGs would provide a formidable capability to the Hellenic Navy because of their recent combat direction system threat upgrades and other state-of-the-art systems. Although these vessels are manpower intensive, Greece is willing to make this trade-off in return for the additional combat capabilities a DDG would provide. KIDD-class DDGs will also provide the Hellenic Navy increased capabilities in supporting U.S.-led operations in the Mediterranean region. However, this transfer will present the Hellenic Navy with the problem of possessing fewer assets to cover the same geographic region.

Section 202(b)(2) authorizes the grant transfer to Greece of the Fast Frigate HEPBURN (FF 1055). This 28 year-old vessel has no remaining service life and will be provided free of charge as a logistics asset to the Hellenic Navy. Greece will use the vessel to provide spare parts for its two operational KNOX FFs. The original acquisition cost of this vessel was $26,589,000.

Section 202(b)(3) authorizes the sale to Greece of the Medium Auxiliary Repair Dry Dock ALAMOGORDO (ARDM 2). This 53 year-old vessel is 24 years past its original service life. Acquired originally for $3,032,000, the vessel will be sold to Greece for $1,250,000.

The U.S. Navy has an agreement with Greece for use of their Souda Bay Naval Station to support United States Navy assets and commitments in that region of the world. Allowing the Hellenic Navy to purchase a dry dock from the United States will increase the Hellenic Navy's ability to maintain itself by allowing significant ship maintenance to be performed under their own control and supervision. This also will increase U.S. Navy voyage repair alternatives.

Section 202(c)(1) authorizes the sale to Turkey of three Guided Missile Frigates: DUNCAN (FFG 10), TISDALE (FFG 27), and REID (FFG 30). These vessels vary in age from 15 to 16 years, and originally cost the United States $446,551,000. Turkey will purchase these frigates for $118,210,000, assuming that Congressional notifications are completed by September, 1998. Delay will preclude the transfer of FFG 30 in "hot" ship condition and will cost the United States $16,791,000.

Following the Madrid Accord between Greece and Turkey, Congress authorized the transfer of three PERRY class FFGs to Turkey, part of the longer-term Turkish Naval strategy of standardizing propulsion systems. Both the TISDALE and REID will be transferred as operational assets for reactivation. The DUNCAN will be transferred as a logistics asset.

Section 202(c)(2) authorizes the grant transfer to Turkey of three Fast Frigates: W.S. SIMMS (FF 1059), PAUL (FF 1080), and MIL-

LER (FF 1091). These 27 year-old vessels, which originally cost $75,503,000, have outlived their service life.

Turkey has requested the KNOX-Class FFs as logistic (parts) assets to support their fleet of eight operational former USN FFs. Transfer of these KNOX-class frigates will enhance Turkey's ability to continue to support these efforts with their operating FFs and add a needed capability to the navy of a vital NATO ally.

Section 202(d) ensures that offers of naval vessels are made contemporaneously to both Greece and Turkey.

Section 203—Inapplicability of aggregate annual limitation to the transfer of certain excess defense articles

Section 203 makes clear that the value of naval vessels authorized to be transferred under sections 201 and 202 of this Act will not be included in the aggregate value of excess defense articles transferred to countries under section 516 of the Foreign Assistance Act of 1961 (U.S.C. 2321j) in any fiscal year.

Section 204—Cost of transfers

Any United States expense in connection with a transfer authorized by this Act will be charged to the recipient.

Section 205—Combined lease-sales.

Sections 201 and 202 of this bill authorize the President to transfer certain ships on a combined lease-sale basis. Section 205 authorizes the President to, in effect, arrange a "lease with an option to buy." The United States is authorized to negotiate the transfer of a vessel under the terms of a lease, with lease payments suspended for the term of the lease. Simultaneously, a foreign military sales agreement for the transfer of title to the lease vessel can be entered into. However, the purchasing country shall not receive the title to the vessel until the purchase price of the vessel has been paid in full. When the title is delivered, the lease will be terminated.

However, if the purchasing country fails to make full payment of the purchase price, the sales agreement immediately will be terminated, the suspension of lease payments vacated, and the United States shall keep all funds that have been received under the sales agreement to date. This may include up to the amount of lease payments due and payable under the lease and all other costs required by the lease to be paid to date. No interest is payable to the recipient by the United States on any amounts paid to the United States by the recipient under the sales agreement but not retained by the United States under the lease.

Section 206—Conversion of Certain Previous Leases

Section 206 authorizes the conversion of leases associated with twenty-five vessels either to a sale or to a grant. All currently are in the possession of the country made eligible to permanently acquire the vessel in question. The leases are near expiration and Section 206 authorizes the President to transfer title of the vessel to the designated country by sale or grant. The United States Navy

has determined that these vessels are not essential to the defense of the United States and may be offered for transfer.

Section 207—Authority to consent to third party transfer of ex-U.S.S. Bowman County to USS LST Ship Memorial, Inc.

Section 207 enables a nonprofit veterans association to return to the United States from Greece a World War II Tank Landing Ship—the ex-U.S.S. Bowman County. This vessel will have its guns demilitarized prior to re-transfer and will be transformed into a movable museum that will dock at predetermined locations to teach children, and adults, about the crucial role played by tank landing ships and their crews during the Second World War. The Committee considers this a fitting a war memorial as it will be owned and operated by a group of its own veterans who are willing to dedicate their time to educating the citizens of the United States.

The Committee notes that there is no more courageous and distinguished a group of men than those who manned the Tank Landing Ships and fought during the numerous amphibious assaults in both the Pacific and Europe. During the course of the war in Europe, veterans who served aboard LSTs stormed the beaches in Sicily, Italy, Normandy, and southern France. In the Southwest Pacific theater, General Douglas MacArthur employed LSTs in his "island hopping campaigns" and in the invasion of the Philippines. In the Central Pacific, Admiral Chester Nimitz used them at Iwo Jima and Okinawa.

In these assaults, the veterans to whom this amendment pays tribute took heavy casualties from withering, point-blank cannon fire. A total of 39 LSTs—and many crewmen and soldiers—were lost during the war. And yet the soldiers who were carried by these ships, and the sailors who manned these vessels, fought on—establishing foothold after foothold and enabling the United States to roll back and defeat the Axis Powers. It is to their heroism, in large part, that the Committee believes the United States owes many of the great victories of the Second World War.

Section 208—Expiration of authorities

Section 207 establishes that the authorities granted under sections 201, 202 and 206 of this act will expire two years after the enactment of this Act.

COST ESTIMATE

Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate requires that Committee reports on bills or joint resolutions contain a cost estimate for such legislation. The Committee on Foreign Relations reported this legislation on July 23, providing the Congressional Budget Office more than six weeks to provide this cost estimate. To date, the Committee has not received the Congressional Budget Office cost estimate.

EVALUATION OF REGULATORY IMPACT

In accordance with Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the Committee has concluded that there is no regulatory impact from this legislation.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by this bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Miscellaneous Authorization—Fiscal Years 1996 and 1997

* * * * * * *

TITLE I—DEFENSE AND SECURITY ASSISTANCE

CHAPTER 1—MILITARY AND RELATED ASSISTANCE

* * * * * * *

SEC. 105. EXCESS DEFENSE ARTICLES FOR CERTAIN EUROPEAN COUNTRIES.

Notwithstanding section 516(e) of the Foreign Assistance Act of 1961, as added by this Act, during each of the fiscal years [1996 and 1997] *1998, 1999, and 2000,* funds available to the Department of Defense may be expended for crating, packing, handling, and transportation of excess defense articles transferred under the authority of section 516 of such act to countries that are eligible to participate in the Partnership for Peace and that are eligible for assistance under the Support for East European Democracy (SEED) Act of 1989.

* * * * * * *

Foreign Assistance Act of 1961

* * * * * * *

PART III

Chapter 1—General Provisions

* * * * * * *

SEC. 514. STOCKPILING OF DEFENSE ARTICLES FOR FOREIGN COUNTRIES.—(a) No defense article in the inventory of the Department of Defense which is set aside, reserved, or in any way earmarked or intended for future use by any foreign country may be made available to or for use by any foreign country unless such transfer is authorized under this Act or the Arms Export Control

Act, or any subsequent corresponding legislation, and the value of such transfer is charged against funds authorized under such legislation or against the limitations specified in such legislation, as appropriate, for the fiscal period in which such defense article is transferred. For purposes of this subsection, "value" means the acquisition cost plus crating, packing, handling, and transportation costs incurred in carrying out this section.

(b)(1)The value of defense articles to be set aside, earmarked, reserved, or intended for use as war reserve stocks for allied or other foreign countries (other than for purposes of the North Atlantic Treaty Organization or in the implementation of agreements with Israel) in stockpiles located in foreign countries may not exceed in any fiscal year an amount that is specified in security assistance authorizing legislation for that fiscal year.

[(2)(A) The value of such additions to stockpiles of defense articles in foreign countries shall not exceed $50,000,000 for each of the fiscal years 1996 and 1997 and $60,000,000 for fiscal year 1998.

[(B) Of the amount specified in subparagraph (A) for each of the fiscal years 1996 and 1997, not more than $40,000,000 may be made available for stockpiles in the Republic of Korea and not more than $10,000,000 may be made available for stockpiles in Thailand. Of the amount specified in subparagraph (A) for fiscal year 1998, not more than $40,000,000 may be made available for stockpiles in the Republic of Korea and not more than $20,000,000 may be made available for stockpiles in Thailand.]

(2)(A) The value of such additions to stockpiles of defense articles in foreign countries shall not exceed $340,000,000 for fiscal year 1999.

(B) Of the amount specified in subparagraph (A) for fiscal year 1999, not more than $320,000,000 may be made available for stockpiles in the Republic of Korea and not more than $20,000,000 may be made available for stockpiles in Thailand.

* * * * * * *

Chapter 5—International Military Education and Training

* * * * * * *

SEC. 546. PROHIBITION ON GRANT ASSISTANCE FOR CERTAIN HIGH INCOME FOREIGN COUNTRIES.

(a) IN GENERAL.—None of the funds made available for a fiscal year for assistance under this chapter may be made available for assistance on a grant basis for any of the high-income foreign countries described in subsection (b) for military education and training of military and related civilian personnel of such country.

(b) HIGH-INCOME FOREIGN COUNTRIES DESCRIBED.—The high-income foreign countries described in this subsection are Austria, Finland, the Republic of Korea, Singapore, and Spain.

SEC. 547. OTHER FOREIGN MILITARY TRAINING.

Notwithstanding any other provision of law, the armed forces or other security forces of a foreign country that is ineligible for assist-

ance under this chapter, or for which assistance under this chapter is restricted, may not receive United States Military training under any other provision of law, unless—

(1) the committees specified in section 634A(a) are notified at least 15 days in advance of the first provision of training to the forces of the country in a fiscal year in accordance with the procedures applicable to reprogramming notifications under that section;

(2) the foreign country is a NATO or major non-NATO ally (as defined in section 644(q));

(3) the foreign country is a country described in section 546(b);

(4) the training is related to an operation undertaken to save the lives or property of United States citizens; or

(5) the training is reportable under title V of the National Security Act of 1947.

Chapter 6—Peacekeeping Operations

* * * * * * *

SEC. 617. TERMINATION OF ASSISTANCE.—Assistance under any provision of this Act may, unless sooner terminated by the President, be terminated by concurrent resolution. Funds made available under this Act *and the Arms Export Control Act* shall remain available for a period not to exceed eight months from the date of termination of assistance [under this Act] for the necessary expenses of winding up programs related thereto. In order to ensure the effectiveness of assistance under this Act *and under the Arms Export Control Act*, such expenses for orderly termination of programs may include the obligation and expenditure of funds to complete the training or studies outside their countries of origin of students whose course of study or training program began before assistance was terminated.

* * * * * * *

SEC. 655. ANNUAL MILITARY ASSISTANCE REPORT.

(a) REPORT REQUIRED.—Not later than February 1 of each year, the President shall transmit to the Congress an annual report for the fiscal year ending the previous September 30.

[(b) INFORMATION RELATING TO MILITARY ASSISTANCE AND MILITARY EXPORTS.—Each such report shall show the aggregate dollar value and quantity of defense articles (including excess defense articles), defense services, and international military education and training authorized by the United States, excluding that which is pursuant to activities reportable under title V of the National Security Act of 1947, to each foreign country and international organization. The report shall specify, by category, whether such defense articles—

[(1) were furnished by grant under chapter 2 or chapter 5 of part II of this Act or under any other authority of law or by sale under chapter 2 of the Arms Export Control Act; or

[(2) were licensed for export under section 38 of the Arms Export Control Act.]

(b) INFORMATION RELATING TO MILITARY ASSISTANCE AND MILITARY EXPORTS.—Each such report shall show the aggregate dollar value and quantity of defense articles (including excess defense articles), defense services, and foreign military education and training activities authorized by the United States and of such articles, services, and activities provided by the United States, excluding any activity that is reportable under title V of the National Security Act of 1947, to each foreign country and international organization. The report shall specify, by category—

(1) in the case of defense articles, whether such articles—

(A) were furnished by grant under chapter 2 or chapter 5 of part II of this Act or under any other authority of law or by sale under chapter 2 of the Arms Export Control Act;

(B) were furnished with the financial assistance of the United States Government, including through loans and guarantees; or

(C) were licensed for export under section 38 of the Arms Export Control Act; and

(2) in the case of foreign military education and training activities, the provision of law pursuant to which such activities were conducted.

* * * * * * *

The Arms Export Control Act

* * * * * * *

Chapter 2—FOREIGN MILITARY SALES AUTHORIZATIONS

SEC. 21. SALES FROM STOCKS.—(a)(1) The President may sell defense articles and defense services from the stocks of the Department of Defense *and the Coast Guard* to any eligible country or international organization if such country or international organization agrees to pay in United States dollars—

* * * * * * *

Chapter 3—MILITARY EXPORT CONTROLS

* * * * * * *

SEC. 36. REPORTS ON COMMERCIAL AND GOVERNMENTAL MILITARY EXPORTS; CONGRESSIONAL ACTION.—(a) The President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate not more than sixty days after the end of each quarter an unclassified report (except that any material which was transmitted in classified form under subsection (b)(1) or (c)(1) of this section may be contained in a classified addendum to such report, and any letter of offer referred to in paragraph (1) of this subsection may be listed in such addendum unless such letter of offer has been the subject of an unclassified certification pursuant to subsection (b)(1) of this section, and any information provided under paragraph (11) of this

subsection may also be provided in a classified addendum) containing—

* * * * * * *

(b)(1) In the case of any letter of offer to sell any defense articles or services under this Act for $50,000,000 or more, any design and construction services for $200,000,000 or more, or any major defense equipment for $14,000,000 or more, before such letter of offer is issued, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification with respect to such offer to sell containing the information specified in clauses (i) through (iv) of subsection (a), or (in the case of a sale of design and construction services) the information specified in clauses (A) through (D) of paragraph (9) of subsection (a), and a description, containing the information specified in paragraph (8) of subsection (a), of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such letter of offer. Such numbered certifications shall also contain an item, classified if necessary, identifying the sensitivity of technology contained in the defense articles, defense services, or design and construction services proposed to be sold, and a detailed justification of the reasons necessitating the sale of such articles or services in view of the sensitivity of such technology. In a case in which such articles or services listed on the Missile Technology Control Regime Annex are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. Each such numbered certification shall contain an item indicating whether any offset agreement is proposed to be entered into in connection with such letter of offer to sell **[**(if known on the date of transmittal of such certification)**]** *and, if so, a description of the offset agreement, including the dollar amount of the agreement*. In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request—

* * * * * * *

(c)(1) In the case of an application by a person (other than with regard to a sale under section 21 or section 22 of this Act) for a license for the export of any major defense equipment sold under a contract in the amount of $14,000,000 or more or of defense articles or defense services sold under a contract in the amount of $50,000,000 or more, before issuing such license the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate an unclassified numbered certification with respect to such application specifying (A) the foreign country or international organization to which such export will be made, (B) the dollar amount of the items

to be exported, and (C) a description of the items to be exported. Each such numbered certification shall also contain an item indicating whether any offset agreement is proposed to be entered into in connection with such export [(if known on the date of transmittal of such certification)] *and, if so, a description of the offset agreement, including the dollar amount of the agreement.* In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request, a description of the capabilities of the items to be exported, an estimate of the total number of United States personnel expected to be needed in the foreign country concerned in connection with the items to be exported and an analysis of the arms control impact pertinent to such application, prepared in consultation with the Secretary of Defense and a description from the person who has submitted the license application of any offset agreement proposed to be entered into in connection with such export (if known on the date of transmittal of such statement). In a case in which such articles or services are listed on the Missle Technology Control Regime Annex and are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 74), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (B) and the details of the description specified in clause (C) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States.

* * * * * * *

(B) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) The provisions of subsection (b)(5) shall apply to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to paragraph (1) in the same manner and to the same extent as that subsection applies to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to subsection (B)(1). For purposes of such application, any reference in subsection (b)(5) to "a letter of offer" or "an offer" shall be deemed to be a reference to "a contract".

* * * * * * *

SEC. 39A. PROHIBITION ON INCENTIVE PAYMENTS

(a) No United States supplier of defense articles or services sold *or licensed* under this Act, nor any employee, agent, or subcontractor thereof, shall, with respect to the sale *or export* of any such de-

fense article or defense service to a foreign country, make any incentive payments for the purpose of satisfying, in whole or in part, any offset agreement with that country.

* * * * * * *

(3) the term "United States person" means—

(A) an individual who is a national or permanent resident alien of the United States; and

(B) any corporation, business association, partnership, trust, or other juridical entity—

(i) organized under the laws of the United States or any State, the District of Columbia, or any territory or possession of the United States; or

(ii) owned or controlled in fact by individuals described in subparagraph (A) *or by an entity described in clause (i).*

○